

Message Text

UNCLASSIFIED

PAGE 01 STATE 155625
ORIGIN L-03

INFO OCT-01 ISO-00 NEA-10 OES-07 PM-04 SP-02 SS-15
ACDA-10 ERDA-07 NRC-07 NSC-05 MC-02 SSO-00 NSCE-00
INR-07 CIAE-00 NSAE-00 AID-05 IO-14 JUSE-00
INRE-00 /099 R

DRAFTED BY L/OES:RJBETTAUER:AL
APPROVED BY L/OES - RJBETTAUER
NEA - MR. KUX
DESIRED DISTRIBUTION
OES, PM, S/P, T/D, ACDA, ERDA, NRC, NSC
-----061062 052104Z /72
O 052019Z JUL 77
FM SECSTATE WASHDC
TO AMEMBASSY NEW DELHI IMMEDIATE
AMCONSUL BOMBAY IMMEDIATE

UNCLAS STATE 155625

E.O. 11652: NA

TAGS: TECH, IN, ENRG

SUBJECT: TARAPUR

REF: STATE 153214

1. FOLLOWING ARE TEXTS, TRANSMITTED FYI, OF TWO PLEADINGS
FILED BY DEPARTMENT OF STATE (THROUGH JUSTICE) IN U.S.
COURT OF APPEALS ON JULY 5. NYE AFFIDAVIT TRANSMITTED
SEPTEL. OTHER ATTACHMENTS TO DEPARTMENT'S PLEADINGS NOT
TRANSMITTED. NRC ALSO FILED TWO PLEADINGS ON JULY 5 --
"MOTION TO VACATE COURT ORDER OF JUNE 30, 1977" (2 PAGES)
AND "OPPOSITION OF U.S. NUCLEAR REGULATORY COMMISSION
TO PETITIONERS' MOTIONS OF JUNE 29 AND 30, 1977"
(17 PAGES) -- NOT TRANSMITTED.

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 STATE 155625

2. BEGIN TEXT:

OPPOSITION TO MOTION FOR MANDAMUS AND EMERGENCY STAY AND
REQUEST FOR DISSOLUTION OF SUSPENSION ORDER

THE DEPARTMENT OF STATE, INTERVENOR-RESPONDENT, BY ITS

UNDERSIGNED ATTORNEYS, RESPECTFULLY OPPOSES THE MOTION FOR MANDAMUS AND EMERGENCY STAY FILED BY PETITIONERS WHICH SEEKS TO ENJOIN AT THIS TIME THE SHIPMENT OF SPECIAL NUCLEAR

MATERIAL TO INDIA ON THE GROUNDS THAT THE GRANTING OF SUCH RELIEF WOULD BE PREJUDICIAL TO UNITED STATES FOREIGN POLICY INTERESTS AND WOULD HAVE A SERIOUS ADVERSE IMPACT UPON ONGOING NON-PROLIFERATION DISCUSSIONS AND NEGOTIATIONS BETWEEN THE UNITED STATES AND THE GOVERNMENT OF INDIA.

AS SUCH, THE RELIEF SOUGHT WOULD HAVE A SERIOUS IMPACT UPON THE PUBLIC INTEREST AS WELL AS PRIVATE INTERESTS INVOLVED. IN ADDITION, THE PETITIONERS CANNOT DEMONSTRATE THAT THEY ARE IRREPARABLY INJURED BY THIS SHIPMENT OF SPECIAL NUCLEAR MATERIAL TO INDIA IN VIEW OF THE CONSOLIDATION BY THE NUCLEAR REGULATORY COMMISSION OF A SUBSEQUENT LICENSE APPLICATION FOR NUCLEAR MATERIAL FOR THE SAME FACILITY. ACCORDINGLY, THE DEPARTMENT OF STATE RESPECTFULLY REQUESTS THAT THE COURT DENY THE MOTION FOR MANDAMUS AND DISSOLVE ITS ORDER OF JUNE 30, 1977, DIRECTING THE SUSPENSION OF LICENSE XSNM-845.

IN SUPPORT OF THIS OPPOSITION, THE COURT IS RESPECTFULLY REFERRED TO THE AFFIDAVIT OF JOSEPH S. NYE, JR., A COPY OF THE EXECUTIVE BRANCH SUBMISSION TO THE N.R.C., UNCLASSIFIED

UNCLASSIFIED

PAGE 03 STATE 155625

DATED JUNE 8, 1977, ATTACHED HERETO AND TO THE MEMORANDUM FILED HERewith.

END TEXT

3. BEGIN TEXT

MEMORANDUM OF THE DEPARTMENT OF STATE IN SUPPORT OF OPPOSITION TO MOTION FOR MANDAMUS AND EMERGENCY STAY

STATEMENT OF THE CASE

THE NUCLEAR REGULATORY COMMISSION, IN A UNANIMOUS DECISION ISSUED ON JUNE 28, 1977, DIRECTED THE ISSUANCE OF EXPORT LICENSE XSNM-845, AUTHORIZING THE SHIPMENT OF SPECIAL NUCLEAR MATERIAL TO INDIA. THIS LICENSE IS THE SUBJECT OF A PROCEEDING ALREADY PENDING BEFORE THIS COURT. FOLLOWING THE COMMISSION'S ACTION, PETITIONERS ASKED THIS COURT TO STAY THE ISSUANCE OF LICENSE APPLICA-

TION XSNM-845 UNTIL SUCH TIME AS (1) THE COMMISSION HAS PUBLISHED FINAL RULES AND PROCEDURES FOR PUBLIC PARTICI-

PATION IN EXPORT LICENSE PROCEEDINGS, (2) THIS COURT HAS RENDERED A DECISION ON THE MERITS OF THE APPEAL CURRENTLY PENDING BEFORE IT, AND (3) ASSUMING A FAVORABLE DECISION BY THE COURT, AN ADJUDICATORY HEARING IS HELD ON THE LICENSE APPLICATION.

THE SPECIAL NUCLEAR MATERIAL COVERED BY LICENSE XSNM-845 IS NEEDED FOR USE AT THE TARAPUR ATOMIC POWER STATION LOCATED NEAR BOMBAY, INDIA, AND IS BEING FURNISHED PURSUANT TO AN AGREEMENT FOR COOPERATION BETWEEN THE UNITED STATES AND THE GOVERNMENT OF INDIA. THE STATE DEPARTMENT, ON JUNE 8, 1977, FURNISHED THE NUCLEAR REGULATORY COMMISSION WITH THE WRITTEN POSITION OF THE EXECUTIVE BRANCH RECOMMENDING THE PROMPT ISSUANCE OF UNCLASSIFIED

UNCLASSIFIED

PAGE 04 STATE 155625

THIS LICENSE. THIS RECOMMENDATION WAS BASED ON THE JUDGMENT THAT THE SHIPMENT IS IMPORTANT TO THE CONDUCT OF THE NEW UNITED STATES' NUCLEAR POLICY AND THAT THE GRANT OF THE LICENSE WOULD NOT BE INIMICAL TO THE COMMON DEFENSE AND SECURITY BECAUSE USE OF THE FUEL WOULD BE SUBJECT TO ALL THE TERMS AND CONDITIONS CONTAINED IN THE AGREEMENT FOR COOPERATION BETWEEN THE UNITED STATES AND INDIA.

IN SUPPORT OF ITS OPPOSITION, THE GOVERNMENT HAS FILED THE AFFIDAVIT OF JOSEPH S. NYE, JR., DEPUTY TO THE UNDERSECRETARY OF STATE FOR SECURITY ASSISTANCE. MR. NYE IS PRIMARILY RESPONSIBLE FOR THE DEVELOPMENT AND IMPLEMENTATION OF THE UNITED STATES' NUCLEAR NON-PROLIFERATION POLICY. MR. NYE'S AFFIDAVIT POINTS OUT THAT PRESIDENT CARTER SPECIFICALLY APPROVED THE EXECUTIVE BRANCH POSITION WITH RESPECT TO THIS LICENSE AND THAT CONSIDERATIONS RELATING TO THIS LICENSE ARE INVOLVED IN SENSITIVE ONGOING DISCUSSIONS BETWEEN THE UNITED STATES GOVERNMENT AND THE GOVERNMENT OF INDIA CONCERNING NUCLEAR NONPROLIFERATION. THESE CONSIDERATIONS HAVE BEEN DISCUSSED DIRECTLY WITH INDIAN PRIME MINISTER DESAI, AND FURTHER DISCUSSIONS ARE CURRENTLY SCHEDULED TO TAKE PLACE IN INDIA ON OR ABOUT JULY 21, 1977. MR. NYE STATES IN HIS AFFIDAVIT THAT A FAILURE TO LIFT THE SUSPENSION OF THIS LICENSE MAY HAVE A SERIOUS AND ADVERSE IMPACT UPON THE CONDUCT OF THESE IMPORTANT FOREIGN POLICY INITIATIVES AS WELL AS THEIR OUTCOME.

THE EVENTS GIVING RISE TO THE CONTROVERSY ARE FULLY SET FORTH IN THE STATE DEPARTMENT'S BRIEF ALREADY ON FILE WITH THIS COURT. ARGUMENT WAS HEARD BY A PANEL IN DECEMBER 1976. IN ITS SUBMISSION OF JUNE 8, 1977, TO UNCLASSIFIED

UNCLASSIFIED

PAGE 05 STATE 155625

THE NUCLEAR REGULATORY COMMISSION, THE STATE DEPARTMENT POINTS OUT THAT THE NEED TO ISSUE THE LICENSE IN DISPUTE HAS BECOME INCREASINGLY URGENT IN ORDER TO PERMIT THE EFFICIENT OPERATION OF THE NUCLEAR FUEL FACILITY IN INDIA IN ACCORDANCE WITH OUR AGREEMENT FOR COOPERATION.

WHILE THE APPLICATION FOR LICENSE XSNM-845 WAS PENDING

BEFORE THE COMMISSION, A SUBSEQUENT LICENSE APPLICATION FOR FURTHER FUEL SUPPLY FOR THE TARAPUR ATOMIC POWER STATION WAS FILED WITH THE COMMISSION, LICENSE APPLICATION XSNM-1060. THE PETITIONERS MOVED TO CONSOLIDATE THE TWO LICENSE APPLICATIONS BEFORE THE COMMISSION IN ORDER TO PREVENT THE ISSUES RAISED BY THE PETITIONERS WITH RESPECT TO LICENSE XSNM-845 FROM BECOMING MOOT. BY ORDER DATED JUNE 22, 1977, THE COMMISSION GRANTED THE CONSOLIDATION MOTION SPECIFICALLY IN ORDER TO PREVENT THE ISSUES TENDERED BY PETITIONERS FROM BECOMING MOOT.

THE GOVERNMENT OPPOSES THE RELIEF SOUGHT BY THE MOTION FOR MANDAMUS AND EMERGENCY STAY BECAUSE THE PETITIONERS CANNOT SATISFY THE TRADITIONAL TESTS FOR OBTAINING SUCH INTERIM RELIEF PENDING ADMINISTRATION ACTION IN THAT (1) THE GRANTING OF SUCH RELIEF MAY HAVE A SERIOUS AND ADVERSE IMPACT ON THE PUBLIC INTEREST BY INTERFERING WITH IMPORTANT AND SENSITIVE FOREIGN POLICY INITIATIVES OF THE UNITED STATES; (2) PETITIONERS, IN THE CIRCUMSTANCES OF THIS CASE, CANNOT DEMONSTRATE THAT THEY ARE IRREPARABLY INJURED BY THE ISSUANCE OF LICENSE XSNM-845 SINCE ALL OF THEIR LEGAL RIGHTS ENCOMPASSED IN THIS PROCEEDING HAVE BEEN FULLY PRESERVED BY THE ORDER OF THE NUCLEAR REGULATORY COMMISSION WITH RESPECT TO LICENSE APPLICATION XSNM-1060; (3) THE RELIEF SOUGHT WOULD HAVE A SERIOUS IMPACT UPON PRIVATE INTERESTS, PARTICULARLY IN INDIA WHERE THE FUEL IS URGENTLY REQUIRED FOR THE EFFICIENT OPERATION OF THE TARAPUR ATOMIC STATION; AND (4) PETI-
UNCLASSIFIED

UNCLASSIFIED

PAGE 06 STATE 155625

TIONERS CANNOT DEMONSTRATE THAT THEY WILL PREVAIL ON THE MERITS.

ARGUMENT

ONE SEEKING INTERIM RELIEF IN THE FORM OF A STAY OR INJUNCTION AGAINST AGENCY ACTION HAS THE BURDEN OF MAKING

A STRONG SHOWING (1) THAT INTERIM RELIEF WILL NOT INTERFERE WITH THE PUBLIC INTEREST; (2) THAT IT WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF INTERIM RELIEF; (3) THAT A GRANT OF INTERIM RELIEF WILL NOT SUBSTANTIALLY INJURE PRIVATE INTERESTS; AND (4) THAT IT IS LIKELY TO PREVAIL ON THE MERITS. VIRGINIA PETROLEUM JOBBERS ASSOCIATION V. FEDERAL POWER COMMISSION, 104 U.S. APP. D.C. 106, 110, 259 F.2D 921, 924 (1958). FOR THE REASONS SET FORTH BELOW, INTERVENOR-RESPONDENT BELIEVES THAT PETITIONERS HAVE FAILED TO MAKE ANY OF THESE REQUIRED SHOWINGS.

1. THE RELIEF SOUGHT WOULD HAVE AN ADVERSE IMPACT

UPON THE PUBLIC INTEREST.

THE RECORD BEFORE THIS COURT DEMONSTRATES THAT DELAY IN THE DISSOLUTION OF THE COURT'S JUNE 30, 1977, ORDER MAY SERIOUSLY PREJUDICE FOREIGN POLICY INTERESTS OF THE UNITED STATES AND JEOPARDIZE THE CONDUCT OF UNITED STATES' INITIATIVES IN THE FIELD OF NONPROLIFERATION POLICY. FOR THE PAST MONTH, THE UNITED STATES AND THE GOVERNMENT OF INDIA HAVE BEEN ENGAGED IN NEW AND SENSITIVE DISCUSSIONS IN A BROAD RANGE OF NUCLEAR ISSUES. THE NEXT ROUND IN THESE TALKS HAS NOW BEEN PROPOSED FOR ON OR ABOUT JULY 21, 1977. THESE DISCUSSIONS CONCERN UNCLASSIFIED

UNCLASSIFIED

PAGE 07 STATE 155625

BOTH TECHNICAL AND GENERAL POLICY ISSUES OF NONPROLIFERATION AND ARE VIEWED BY BOTH GOVERNMENTS AS CENTRAL TO ACHIEVING A COMMON UNDERSTANDING OF THE NONPROLIFERATION ISSUES ASSOCIATED WITH UNITED STATES-INDIA NUCLEAR COOPERATION. INTERFERENCE WITH THE CONDUCT OF THESE MEETINGS MAY SERIOUSLY PREJUDICE THESE IMPORTANT FOREIGN POLICY INITIATIVES.

INDEED, IT WAS IN THIS CONTEXT THAT, ON JUNE 8, 1977, IN ACCORDANCE WITH THE PROCEDURE SPECIFIED IN EXECUTIVE ORDER 11902 (FEBRUARY 2, 1976), THE DEPARTMENT OF STATE SUBMITTED THE EXECUTIVE BRANCH'S POSITION TO THE COMMISSION, RECOMMENDING THE IMMEDIATE GRANT OF LICENSE APPLICATION NO. XSNM-845. THE EXECUTIVE BRANCH ADVISED THE COMMISSION THAT "(A) NEW AND DEMOCRATIC GOVERNMENT HAS TAKEN OFFICE IN INDIA AS A RESULT OF GENERAL ELECTIONS IN MARCH" AND THAT PRESIDENT CARTER IS VERY INTERESTED IN EXPANDING "OUR DIALOGUE WITH THAT GOVERNMENT ON A VARIETY OF ISSUES, INCLUDING NUCLEAR MATTERS." SEE EXECUTIVE BRANCH SUBMISSION TO N.R.C., P. 4. THE EXECUTIVE BRANCH FURTHER ADVISED:

... THAT OUR FOREIGN POLICY INTEREST WILL BE BEST SERVED BY ESTABLISHING A FAVORABLE ATMOSPHERE FOR THOSE DISCUSSIONS AND THAT APPROVAL OF THIS LICENSE APPLICATION WOULD BE AN IMPORTANT STEP IN THIS PROCESS.

THE SAME DOCUMENT INDICATES THAT:

... THE GOVERNMENT OF INDIA HAS GIVEN THE UNITED STATES WRITTEN ASSURANCE THAT THE SPECIAL NUCLEAR MATERIAL, AND PRODUCTS THEREFROM, EXPORTED BY THE U.S. TO TARAPUR "... WILL BE DEVOTED EXCLUSIVELY TO THE NEEDS OF UNCLASSIFIED

UNCLASSIFIED

PAGE 08 STATE 155625

THAT STATION" UNLESS THE U.S. SPECIFICALLY AGREES THAT SUCH MATERIAL MAY BE USED FOR

OTHER PURPOSES. OBVIOUSLY, THE U.S. WOULD NOT AGREE TO USE OF SUCH MATERIAL IN ANY NUCLEAR EXPLOSIVE DEVICE.

WITH REGARD TO INDIAN POLICIES ON DEVELOPING NUCLEAR EXPLOSIVE DEVICES, WE ARE ENCOURAGED BY PRIME MINISTER DESAI'S RECENT STATEMENTS, AND IT IS OUR HOPE THAT INDIA WILL CONCLUDE THAT FURTHER TESTING OF PNE'S WILL NOT SERVE A USEFUL PURPOSE. THE INDIANS ARE ALSO AWARE THAT UNDER OUR NEW NUCLEAR POLICY THE U.S. WILL BE UNABLE IN THE FUTURE TO CONTINUE NUCLEAR COOPERATION WITH A COUNTRY THAT EXPLODES A NUCLEAR DEVICE.

THE EXECUTIVE BRANCH CONCLUDED BY STRONGLY RECOMMENDING "THE PROMPT ISSUANCE OF XSNM-845, AS AMENDED", EMPHASIZING THAT:

... (T)HIS SHIPMENT, APPROVED AT THE HIGHEST LEVELS, IS BELIEVED TO BE IN THE BEST INTEREST OF U.S. FOREIGN POLICY OBJECTIVES, PARTICULARLY THOSE RELATED TO NON-PROLIFERATION.

AS MR. NYE'S AFFIDAVIT POINTS OUT, THE U.S. GOVERNMENT'S CONSIDERATIONS REGARDING LICENSE XSNM-845 WERE SPECIFICALLY APPROVED BY PRESIDENT CARTER AND WERE DIRECTLY DISCUSSED WITH INDIAN PRIME MINISTER DESAI. UNCLASSIFIED

UNCLASSIFIED

PAGE 09 STATE 155625

IN VIEW OF THE POTENTIAL IMPACT UPON THE PUBLIC INTEREST BY INTERFERENCE WITH IMPORTANT FOREIGN POLICY OBJECTIVES, THE COURT'S USE OF ITS EQUITY POWER IS NEITHER APPROPRIATE NOR WARRANTED. ACCORDINGLY, THE MOTIONS FOR EMERGENCY STAY SHOULD BE DENIED AND THIS COURT'S ORDER OF JUNE 30, 1977, SHOULD BE VACATED.

2. PETITIONERS' CANNOT DEMONSTRATE THAT THEY WILL BE IRREPARABLY INJURED.

PETITIONERS' ARGUMENTS ON IRREPARABLE INJURY ARE TWO-FOLD. FIRST, THEY ARGUE THAT THE FUEL WILL BE SHIPPED WITHOUT APPROPRIATE CONDITIONS OR RESTRICTIONS ON ITS USE IN ORDER TO REDUCE THE RISK OF INJURY. THIS CONTENTION IS WITHOUT MERIT BECAUSE, AS SET FORTH IN THE EXECUTIVE BRANCH'S SUBMISSION TO THE N.R.C., AN ANALYSIS OF ALL OF THE PERTINENT CONSIDERATIONS DEMONSTRATES THAT THE SHIPMENT OF THIS SPECIAL NUCLEAR MATERIAL

WOULD NOT BE INIMICAL TO THE COMMON DEFENSE AND SECURITY OF THE UNITED STATES AND WOULD BE SUBJECT TO ALL THE TERMS AND CONDITIONS OF THE AGREEMENT FOR COOPERATION WITH INDIA. FOR EXAMPLE, THE LICENSE APPLICATION ANALYSIS POINTS OUT THAT THE LOW-ENRICHED URANIUM "IS NOT A NUCLEAR WEAPON MATERIAL" (P. 3); THAT INDIA HAS GIVEN THE UNITED STATES WRITTEN ASSURANCE THAT THE SPECIAL NUCLEAR MATERIAL AND PRODUCTS THEREFROM WILL BE DEVOTED EXCLUSIVELY TO THE NEEDS OF THE TARAPUR FACILITY AND THAT THE GRANT OF THIS LICENSE IS AN IMPORTANT ASPECT IN CONTINUING NEGOTIATIONS WITH THE NEW DEMOCRATIC GOVERNMENT IN INDIA (P. 4). THESE CONSIDERATIONS ARE THE PROVINCE OF THE EXECUTIVE BRANCH AND THE PRESIDENT IN DETERMINING THE FOREIGN POLICY INTERESTS OF THE UNITED STATES AND ARE ENTITLED TO GREAT WEIGHT AND DEFERENCE BEFORE THIS COURT.

UNCLASSIFIED

UNCLASSIFIED

PAGE 10 STATE 155625

SECONDLY, PETITIONERS ALSO CONTEND THAT THE GRANT OF THIS LICENSE WILL RENDER THE INSTANT PROCEEDINGS MOOT. THAT ARGUMENT ALSO IS WITHOUT MERIT.

PETITIONERS WILL NOT BE PREJUDICED BY THE GRANT OF

THIS LICENSE APPLICATION BECAUSE THE PROCEDURAL ISSUES CONCERNING THE PARTICIPATION IN NUCLEAR LICENSING PROCEEDINGS INVOLVING THE EXPORT OF SPECIAL NUCLEAR MATERIAL HAVE BEEN PRESERVED FOR REVIEW AND RESOLUTION BY THIS COURT. THEIR APPEAL ON THESE ISSUES IS NOT MOOT; THE SHIPMENT THEY SEEK TO ENJOIN IS ONLY ONE IN A SERIES OF FUEL SHIPMENTS TO TARAPUR THAT BEGAN IN 1969. TO DATE, THE COMMISSION AND ITS PREDECESSOR, THE ATOMIC ENERGY COMMISSION, HAVE AUTHORIZED 26 SHIPMENTS OF NUCLEAR FUEL IN CONNECTION WITH THE TARAPUR FACILITY.

IN ADDITION, TO ELIMINATE ANY POSSIBILITY OF PREJUDICE TO PETITIONERS, THE COMMISSION, ON JUNE 22, 1977, GRANTED THEIR MOTION ASKING THAT APPLICATION NUMBER XSNM-1060 BE CONSOLIDATED WITH APPLICATION NO. XSNM-845. THE COMMISSION STATED PART OF ITS RATIONALE FOR CONSOLIDATING THE TWO APPLICATIONS AS FOLLOWS:

... PROCEDURAL ISSUES REGARDING PETITIONERS' PARTICIPATION IN EXPORT LICENSE PROCEEDINGS ARE SUB JUDICE IN NRDC V. NRC, NO. 76-1525 (D.C. CIR., FILED JUNE 11, 1976). CONSOLIDATION OF THESE ACTIONS WILL PERMIT AVOIDANCE OF ANY SUGGESTION THAT THE COMMISSION HAS MOOTED, OR IS SEEKING TO MOOT, THESE PROCEEDINGS BECAUSE THE CIRCUMSTANCES WARRANT UNCLASSIFIED

UNCLASSIFIED

PAGE 11 STATE 155625

OUR AUTHORIZING A FURTHER FUEL SHIPMENT

(XSNM-845) SIMILAR TO THAT WHICH WAS AUTHORIZED LAST JULY IN XSNM-805. (EDLOW INTERNATIONAL COMPANY, DOCKET NOS. 70-2131 AND 70-2485 (JUNE 22, 1977), P. 4.)

PETITIONERS STATED THAT THEIR PURPOSE IN SEEKING CONSOLIDATION WAS TO PRESERVE THE JUDICIAL ISSUES CONCERNING THEIR PROCEDURAL RIGHTS AND CONCEDE THAT THE TWO APPLICATIONS "RAISE VIRTUALLY IDENTICAL ISSUES" (SEE INITIAL MOTION FOR STAY, P. 6, FN. 5). THUS, ALTHOUGH PETITIONERS MAINTAIN THAT THE COMMISSION SHOULD ACT UPON THE TWO APPLICATIONS SIMULTANEOUSLY, THEY HAVE ALSO RECOGNIZED THAT THE COMMISSION'S CONSOLIDATION ACTION FULLY PROTECTED THEIR RIGHTS TO A DECISION BY THIS COURT ON THE MERITS OF THEIR STANDING AND HEARING CLAIMS. (SEE FN 1 AT END)

3. THE RELIEF SOUGHT WILL INJURE PRIVATE INTERESTS.

THE LICENSE APPLICATION ANALYSIS SUBMITTED TO THE

N.R.C. BY THE EXECUTIVE BRANCH DEMONSTRATES THAT THE GRANT OF THE LICENSE IS NECESSARY TO PERMIT THE INDIAN FUEL-FABRICATING FACILITY TO RESUME NORMAL OPERATIONS. THUS, THE FAILURE TO EXPORT THIS MATERIAL OR ITS FURTHER DELAY REQUIRES INDIA TO OPERATE ITS FABRICATION FACILITY IN AN INEFFICIENT MANNER. IT SHOULD BE NOTED THAT OUR AGREEMENT FOR COOPERATION WITH INDIA CONTEMPLATES THAT WE WILL PROVIDE FUEL "NECESSARY TO PERMIT THE EFFICIENT AND CONTINUOUS OPERATION OF THE STATION."

4. THERE IS NO LIKELIHOOD OF SUCCESS ON THE MERITS.

WE HAVE PREVIOUSLY FULLY BRIEFED THE CENTRAL ISSUES IN THIS CONTROVERSY REGARDING PETITIONERS' CLAIMS
UNCLASSIFIED

UNCLASSIFIED

PAGE 12 STATE 155625

TO PROCEDURAL RIGHTS BEFORE THE N.R.C. WE BELIEVE THAT THEY ARE WITHOUT MERIT. WE ALSO BELIEVE THAT THE CIRCUMSTANCES INVOLVED IN THE PRESENT LICENSE, TIED IN AS THEY ARE WITH CURRENT FOREIGN POLICY OBJECTIVES OF THIS GOVERNMENT, FULLY DEMONSTRATE THAT THE PROCEDURES FOLLOWED BY THE N.R.C. ARE APPROPRIATE AND CONSISTENT WITH APPLICABLE LAW.

CONCLUSION

THE DEPARTMENT OF STATE VIGOROUSLY OPPOSES ANY INJUNCTION EITHER AS INTERIM RELIEF OR OTHERWISE. THE NUCLEAR REGULATORY COMMISSION'S ACTION IN ISSUING LICENSE XSNM-845 WAS LEGALLY CORRECT AND IN THE PUBLIC

INTEREST AND ANY FURTHER DELAY IN THE SHIPMENT OF THIS MATERIAL WOULD CONSTITUTE A DISSERVICE TO THE PUBLIC INTEREST. ACCORDINGLY, PETITIONERS' MOTIONS SHOULD BE DENIED.

FN 1. MOREOVER, PETITIONERS' CONTENTION REGARDING ALLEGED IMPROPER CONDUCT BY THE N.R.C., THE STATE DEPARTMENT, AND EDLOW, DESIGNED TO EVADE JUDICIAL REVIEW, ARE WITHOUT FOUNDATION. ALL CONTACTS WITH THE N.R.C. BY THE EXECUTIVE BRANCH IN CONNECTION WITH THIS LICENSE HAVE BEEN MADE IN A ROUTINE AND REGULAR MANNER CONSISTENT WITH THE PROCEDURES ESTABLISHED FOR CONSIDERATION BY THE COMMISSION FOR THIS TYPE OF APPLICATION.

IN ADDITION, PETITIONERS HAVE BEEN ON EXPLICIT NOTICE SINCE AT LEAST MAY 7, 1976, THAT THE COMMISSION WAS PREPARED TO ACT ON THIS LICENSE APPLICATION IF A NEED TO DO SO WERE TO ARISE. WELL OVER AEAR AGO, THE
UNCLASSIFIED

UNCLASSIFIED

PAGE 13 STATE 155625

COMMISSION EXPLAINED THAT:

... BECAUSE OF THE GENERIC CHARACTER OF THE ISSUES RAISED, THE COMMISSION MAY ACT ON ONE OR BOTH OF THESE APPLICATIONS PRIOR TO THE CONCLUSION OF THE HEARINGS IF IT FINDS THAT A NEED FOR GREATER EXPEDITION IN ACTING ON THESE LICENSES HAS BEEN SHOWN. THE HEARINGS WOULD THEN BE CONTINUED FOR THE PURPOSE OF ASSISTING THE COMMISSION IN ITS DETERMINATION OF SUBSEQUENT LICENSES FOR THE TARAPUR FACILITY. (IN THE MATTER OF EDLOW INTERNATIONAL COMPANY, 3 NRC 563, 591 (1976).)

END TEXT VANCE

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NUCLEAR COOPERATION PROGRAMS, NUCLEAR FUELS
Control Number: n/a
Copy: SINGLE
Sent Date: 05-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01-Jan-1960 12:00:00 am
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE155625
Document Source: CORE
Document Unique ID: 00
Drafter: RJBETTAUER:AL
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770238-0818
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770791/aaaadbbf.tel
Line Count: 514
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 1fc84271-c288-dd11-92da-001cc4696bcc
Office: ORIGIN L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 10
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 77 STATE 153214
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 26-Oct-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1964123
Secure: OPEN
Status: NATIVE
Subject: TARAPUR
TAGS: TECH, ENRG, IN
To: NEW DELHI BOMBAY
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/1fc84271-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009